



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 3, 2022

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Candice Smith**
Tax Registry No. 947495
Police Service Area 1, Viper 13
Disciplinary Case No. 2020-22207

The above named member of the service appeared before Assistant Deputy Commissioner Josh Kleiman on July 26, 2022 and was charged with the following:

DISCIPLINARY CASE NO. 2020-22207

1. Said Police Officer Candice Smith, while assigned to the 34th Precinct and off-duty, on or about June 12, 2020, in Queens County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer wrongfully operated a motor vehicle while under the influence of an intoxicant.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

Vehicle and Traffic Law §1192 (3)

**OPERATING A MOTOR
VEHICLE WHILE UNDER THE
INFLUENCE OF ALCOHOL**

2. Said Police Officer Candice Smith, while assigned to the 34th Precinct and off-duty, on or about June 12, 2020, in Queens County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer wrongfully operated a motor vehicle while her ability to do so was impaired by the consumption of alcohol.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

Vehicle and Traffic Law §1192 (1)

**OPERATING A MOTOR
VEHICLE WHILE UNDER THE
INFLUENCE OF ALCOHOL**

3. Said Police Officer Candice Smith, while assigned to the 34th Precinct and off-duty, on or about June 12, 2020, in Queens County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer wrongfully refused to submit to a chemical breath test to determine her blood alcohol concentration.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

4. Said Police Officer Candice Smith, while assigned to the 34th Precinct and off-duty, on or about June 12, 2020, in Queens County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer was unfit for duty.

P.G. 203-04, Page 1, Paragraphs 1&2

FITNESS FOR DUTY

In a Memorandum dated September 2, 2022, Assistant Deputy Commissioner Josh Kleiman found Police Officer Candice Smith guilty of all Specifications in Disciplinary Case No. 2020-22207 after Police Officer Smith entered a plea of guilty to all Specifications. Having read the Memorandum and analyzed the facts of this matter, I approve of the findings, and agree that Police Officer Smith be separated from the Department by way of vested interest retirement. However, I do not agree with the additional conditions.

Having considered the totality of the circumstances and issues concerning the misconduct for which Police Officer Smith has been found guilty, separation from the Department will be implemented as follows.

In lieu of dismissal, an *immediate* post-trial settlement agreement will be implemented with Police Officer Candice Smith in which she shall forfeit thirty-one (31) suspension days (already served), forfeit thirty (30) suspension days (to be served), forfeit all time and leave balances, submit to ordered breath testing, cooperate with counseling, be placed on one (1) year dismissal probation, and immediately file for vested interest retirement.

Such vested interest retirement shall also include Police Officer Candice Smith's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department.

POLICE OFFICER CANDICE SMITH

DISCIPLINARY CASE NO. 2020-22207

If Police Officer Candice Smith does not agree to the terms of this vested interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented ***IMMEDIATELY***.



Keechant L. Sewell
Police Commissioner



POLICE DEPARTMENT

September 2, 2022

-----X
In the Matter of the Charges and Specifications :

- against - :

Police Officer Candice Smith :

Tax Registry No. 947495 :

Police Service Area 1, VIPER 13 :

Case No.

2020-22207

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Jamie Moran, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth and London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

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P.G. 203-04, Page 1, Paragraphs 1 & 2

FITNESS FOR DUTY

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 26, 2022. Respondent, through her counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal recommends that Respondent be Separated from the Department.

SUMMARY OF EVIDENCE IN MITIGATION

On June 12, 2020, Respondent was arrested for driving while intoxicated, after being involved in a motor vehicle collision while operating her personal car within the confines of the 105th Precinct. Respondent explained during her mitigation testimony that earlier that evening, while off-duty, she went to dinner with her sister, her girlfriend, and a close family friend. While at dinner, she consumed multiple alcoholic beverages. Respondent admitted she became intoxicated during dinner. She further admitted that she remained intoxicated at home after dinner. At some point that night, she decided to drive to "get a Gatorade" and stop by her parents' house, which was close by. On her way, Respondent was involved in a motor vehicle accident, when she side-swiped a passing car. No injuries were noted. Respondent admitted the accident was her fault. (Tr. 15-17)

Respondent stayed on scene until officers arrived. She identified herself as a Member of Service to the responding officers. The officers determined she was unfit for duty due to intoxication, based upon her slurred speech and an odor emanating from her breath. Respondent was transported to the 112th Precinct. (Tr. 23-24; Dept. Ex. 1)

At the precinct, Respondent refused to submit to a breathalyzer test. Before a criminal court, she was ordered to pay a fine, had her license suspended for 90 days, and received a one-year conditional discharge. (Tr. 17; Dept. Exs. 1 & 2; Resp. Exs. A & B)

Respondent testified that she is Shinnecock Indian and grew up spending time on a reservation where drinking alcohol before the age of 21 was common. She has struggled with alcoholism much of her life. When asked, at trial, if she was sober, she answered that as of now she has been sober for “[o]ver two months,” adding “[n]ot a big feat for most, but for me it is” (Tr. 13). Prior to the incident date, she had been sober for over seven months (Tr. 15).

Respondent explained that as of June 2020, she was struggling with several problems. Due to COVID and the prevalence of protests, she testified that she was working long hours without her regular days off. At the time, her grandmother, who was “almost like a second mother,” was sick (succumbing to her illness in November 2020) (Tr. 14, 20). She testified that the incident date “was my first RDO by choice and by order in almost nine-plus months” (Tr. 20). She admitted she made a bad choice in choosing to drink that night (Tr. 17).

The instant disciplinary matter constitutes Respondent’s third alcohol related incident during her career with the Department. She has twice been placed on Dismissal Probation. In 2013, Respondent pled guilty and forfeited 30 suspension days, 20 vacation days, was placed on one-year Dismissal Probation, and was required to cooperate with ordered breath testing and counseling, in connection with a 2011 incident, during which she drove her car, while intoxicated, the wrong way on the Sagitikos Parkway in Suffolk County, hitting a guard rail and causing her airbags to deploy (*Disciplinary Case No. 2011-6414*). Upon being arrested, Respondent was found to have a blood alcohol concentration of 0.17%. Before a criminal court, she pled guilty to Operating a Motor Vehicle While under the Influence of Alcohol or Drugs. (Dept. Ex. 2)

In 2018, Respondent forfeited 30 suspension days, was placed on one-year Dismissal Probation, and was required to cooperate with ordered breath testing and counseling, after pleading guilty to engaging in a substantial off-duty physical altercation, causing injuries to a person she had been drinking with (*Disciplinary Case No. 2017-17342*).¹ In connection with that incident, Respondent was arrested and pled guilty in criminal court to Attempted Assault in the Third Degree. (Dept. Ex. 2)

Both of these prior disciplinary matters occurred while Respondent was off-duty. There is no evidence that Respondent's drinking has affected her on-the-job performance. To the contrary, according to her personnel file, Respondent has never received a performance evaluation that did not rank her as "highly competent" or better. In the past, her commanding officers have variously described her as "an excellent role model" and as possessing a "strong work ethic." (Dept. Ex. 2)

The Tribunal is sensitive to members of the service struggling to cope with the relentless disease of alcoholism. Studies have also shown a correlation between high stress careers and substance abuse. The Department's long history and experience with members suffering from substance abuse problems has led to the establishment of the NYPD's Counseling Services Unit and the training of supervisors to identify the effects of alcoholism in their ranks in order to refer members for counseling and monitoring (*see* P.G. 330-16). The Department also trains its police cadets and officers to identify the causes and symptoms of alcoholism and makes them aware of counseling and treatment options, both inside and outside the Department (*see, e.g., Stress Management for Police Officers, Police Student's Guide* [October 2019]).

¹ While Respondent's disciplinary charge did not note the involvement of alcohol, the facts of the case, and the corresponding penalty, made clear that the physical altercation was alcohol-related. Two witnesses to the incident described Respondent as "intoxicated." (Dept. Ex. 2)

Nevertheless, the Department's duty to safeguard the public continues to be its chief mission. Where an officer is only a danger to themselves, is able to perform their work, and is seeking help, an accommodation might be made that does not require the Department to sacrifice its chief mission in aid of an officer (*see, e.g., Stabner v. NY City Hous. Auth.*, 165 AD2d 792, 796 [1st Dept 1990] ["[I]t is somewhat puzzling and disturbing to note that petitioner [who was employed as a Housing Officer] was to be terminated because of one incident, involving injury to no other person, which was clearly the direct result of his alcoholism, a disease for which he has sought treatment, in spite of the fact that he has shown every indication of the likelihood of a successful rehabilitation and continued service as an extremely valuable member of his force."])).

Where an officer, however, shows themselves to be a danger to others, the Department must first act in a manner protective of the public. Respondent's alcoholism has resulted in dangerous and/or violent outcomes on multiple occasions, placing public safety at risk. The Department need not wait for worse outcomes to materialize before separating Respondent from her service as an armed police officer. Accordingly, the Tribunal agrees with the Department's recommendation that Respondent's employment with the Department come to an end.

The Department has further argued, however, that Respondent should not be given pensionable credit for her 14 years of service. This recommendation, while supported by the Disciplinary Guidelines, lacks a sufficient factual predicate in the record to justify its imposition. Respondent's current and past misconduct does not involve official misconduct, an egregious abuse of police authority, an intentionally false official statement, or some other disqualifying on-the-job or off-duty misconduct. Rather, all indications available to the Tribunal are that Respondent's on-the-job work performance has been admirable. And the record is uncontroverted that her off-duty misconduct is related to an illness, which Respondent has struggled with much of her life. Accordingly, while the Tribunal finds a sufficient basis to

recommend that Respondent lose her job because she has repeatedly engaged in serious misconduct outside of work, it finds the lack of a sufficient basis upon which to terminate her in a manner in which she is dispossessed of credit for her 14 years of honest and admirable work.

The Tribunal's finding is not without support in case precedent. Most recently, in *Disciplinary Case No. 2020-22808* (May 20, 2022), a seventeen-year detective, with a prior alcohol-related disciplinary matter, was separated via an immediate vested interest retirement for leaving a Police Academy training during his meal hour, consuming multiple alcoholic beverages, returning to work six hours later, driving his vehicle into a parking lot security gate arm, and refusing a breathalyzer test upon arrest. Similarly, in *Disciplinary Case No. 2018-18560* (Jan. 3, 2019), a seven-year police officer, with a prior alcohol-related disciplinary matter, was separated by way of an immediate vested interest retirement after a mitigation hearing, at which the subject officer pled guilty to: while off-duty, operating a motor vehicle while intoxicated and impaired by alcohol, including striking a guardrail and driving backwards on an interstate highway, engaging in a physical altercation with his girlfriend and another individual, and failing to safeguard his firearm.

Accordingly, based on the foregoing analysis, the Tribunal recommends that Respondent be Separated from the Department by offer of an immediate vested interest retirement, forfeit 31 pre-trial suspension days, serve an additional 30 suspension days, be required to continue to cooperate with required breath testing until separation, and forfeit all of her time and leave balances.



Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Josh Kleiman".

Josh Kleiman
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER CANDICE SMITH
TAX REGISTRY NO. 947495
DISCIPLINARY CASE NO. 2020-22207

Respondent was appointed to the Department on July 8, 2008. On her three most recent annual performance evaluations, she was rated “Exceeds Expectations” for 2019, 2020 and 2021. She has been awarded three medals for Meritorious Police Duty and two medals for Excellent Police Duty.

In 2013, Respondent forfeited 30 suspension days, 20 vacation days, was placed on dismissal probation and directed to comply with counseling and breath testing after pleading guilty to operating a motor vehicle while under the influence of and impaired by alcohol, being unfit for duty and intoxicated with a BAC of 0.17, operating a motor vehicle southbound on the northbound side of the parkway, failing to safeguard her NYPD shield number and possessing a counterfeit shield.

In 2018, Respondent forfeited 30 suspension days, was placed on dismissal probation and directed to comply with counseling and breath testing after pleading guilty to engaging in a physical altercation while off-duty and failing to request the response of a patrol supervisor.

In connection with the instant matter, Respondent was suspended without pay from June 12 to July 12, 2020. She was again placed on Level 2 Discipline Monitoring in April 2021; monitoring remains ongoing.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials